No. 82-1540

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, *et al.*,
Petitioners,

v.

ROBERT QASIM, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

---

BRIEF *AMICI CURIAE* OF THE STATE OF MARYLAND AND THE COMMONWEALTH OF VIRGINIA IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

STEPHEN H. SACHS *
Attorney General of Maryland
7 North Calvert Street
Baltimore, Maryland 21202
(301) 576-6300

GERALD BALILES
Attorney General of Virginia
Supreme Court Building
101 North 8th Street
Richmond, Virginia 23219
(804) 786-2071

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

We hereby adopt the QUESTIONS PRESENTED contained in the Petition. Pet. (i).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: Page

Constitutional Provisions, Statutes, and Rules:

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1540

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, *et al.*,

Petitioners,

v.

ROBERT QASIM, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF *AMICI CURIAE* OF THE STATE OF MARYLAND AND THE COMMONWEALTH OF VIRGINIA IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

INTEREST OF *AMICI*

The State of Maryland and the Commonwealth of Virginia are signatories to the Washington Metropolitan Area Transit Authority Compact, Pub. L. No. 89-774, 80 Stat. 1324 (1966) ("the Compact" or "the WMATA Interstate Compact"). As signatories, the States have a surpassing interest in ensuring that the terms of the Compact are observed according to its plain language and the interpretation given that language by the signatories. This is particularly true with regard to the provisions authorizing suit against WMATA, because Maryland and Virginia contribute funds from their state treasuries to WMATA for its operating budget, and it is from that budget that WMATA pays the damage awards imposed upon it. The decision below is contrary to both the plain

meaning of Section 81 of the Compact and our interpretation of that provision.

Moreover, the implications of the decision below extend beyond the confines of these seven cases. By refusing to honor the plain meaning of the Compact's terms, the lower court threatens to upset established principles for interpreting interstate compacts. Maryland and Virginia are parties to several such compacts (*see* The Council of State Governments, *Interstate Compacts and Agencies*, pp. 38 (Maryland), 43 (Virginia) (1979 ed.)), which have been faithfully entered into based upon the plain meaning of their terms, as understood by their signatories. Because the court below interpreted one such compact by relying upon language nowhere found in the agreement and upon subsequent congressional legislation having nothing to do with the WMATA Interstate Compact, its decision puts at risk the approach which we, and other States as well, have always followed in construing these agreements.

Furthermore, the District of Columbia Court of Appeals, a federal court created by Congress under Article I of the Constitution, concluded that the Eleventh Amendment does not bar the local District of Columbia courts from exercising jurisdiction over WMATA. In fact, that court added that "Maryland and Virginia do not have sovereign immunity from suits brought in the District of Columbia courts." Pet. App. 4a. This conclusion is at odds with the text of the Eleventh Amendment, its history, and its underlying principles. None of these distinguish between the "Judicial power" granted Article I and Article III courts. Moreover, this Court's decisions have consistently respected that history and those principles, and do not support the conclusion of the court below. Accordingly, we believe that the Eleventh Amendment bars suit against WMATA, Maryland, and Virginia in the District of Columbia, and that the lower court erred by holding to the contrary.

REASONS FOR GRANTING THE PETITION

A. The Court Below Misinterpreted the Eleventh Amendment and Section 81 of the WMATA Interstate Compact.

The court below held that WMATA may be sued in the local courts of the District of Columbia. Unless this decision is reversed, WMATA will be subject to suit in the local courts of the District, contrary to both the applicable Eleventh Amendment principles and Section 81 of the Compact.

1. The Eleventh Amendment to the Constitution of the United States expressly limits "[t]he Judicial power of the United States * * *" by granting the States immunity from suit in federal court. The familiar history of the Eleventh Amendment makes it clear that the Amendment was meant as something more than an empty gesture to the States. This Court long ago observed that "[a]ny such power as that of authorizing the federal judiciary to entertain suits by individuals against the States had been expressly disclaimed, and even resented, by the great defenders of the Constitution whilst it was on its trial before the American people." *Hans* v. *Louisiana*, 134 U.S. 1, 12 (1890). After *Chisholm* v. *Georgia*, 2 U.S. (2 Dall.) 419 (1793), erroneously rejected that consensus view of the Founding Fathers, the States enacted the Eleventh Amendment to embody the proposition that "States of the Union, still possessing attributes of sovereignty, shall be immune from suits, without their consent, save where there has been 'a surrender of this immunity in the plan of the convention.'" *Monaco* v. *Mississippi*, 292 U.S. 313, 322-323 (1934), quoting *The Federalist*, No. 81, at 487 (A. Hamilton).

Because of the importance of the Eleventh Amendment to our federal system, this Court has not been chary with its interpretation of the Amendment's reach. In each case, whether the question has been to determine what parties are barred by the Eleventh Amendment from su-

ing,[1] what parties are entitled to rely upon the immunity granted by the Eleventh Amendment,[2] or what claims are barred under the Eleventh Amendment,[3] this Court has recognized that, because "[t]he very object and purpose of the 11th Amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties" (*Ex parte Ayers*, 123 U.S. 443, 505 (1887)), the immunity granted by the Amendment must be given an interpretation commensurate "with such breadth and largeness as effectually to accomplish the substance of its purpose." *Id.* at 506.

The Eleventh Amendment, therefore, is clearly broad enough to encompass suits brought (a) against an interstate agency, (b) in an Article I court, (c) by a resident of the District of Columbia. Each of these conclusions, we believe, follows ineluctably from elemental Eleventh Amendment principles.

a. Whether an *interstate* agency may invoke the Eleventh Amendment is a question not different in kind from the question of whether an *intrastate* agency may do so. A State's decision to enter into an interstate compact with one or more other States, and the decision by two or more States to create an interstate agency to exercise intersovereign responsibility for the management of an ongoing interstate enterprise, will normally hinge upon the degree to which mutual cooperation is both necessary and feasible to address a particular problem.[4]

---

[1] *E.g.*, *Hans* v. *Louisiana*, *supra* (suit against a State by one of its own citizens).

[2] *E.g.*, *Alabama* v. *Pugh*, 438 U.S. 781 (1978) (per curiam) (suit against a state agency).

[3] *E.g.*, *Ex parte New York*, 256 U.S. 490 (1921) (suit against a State in admiralty).

[4] In this regard, while some degree of economic self-sufficiency is often desirable, it is likewise often the case, as it is with respect to WMATA, that each of the state signatories to an intersate compact will retain some degree of financial responsibility for the

Nothing in the history or purposes of the Eleventh Amendment suggests that the States must abandon their immunity when joining together to create an interstate agency. The important question, however, is not whether the Framers of the Eleventh Amendment had in mind the possibility that a State would resort to an interstate agency, rather than an institution all of its own, to carry out the business of the State. The question is whether, if the Framers had considered this matter, they would have reasonably concluded that a State surrendered all hope of immunity for this agency simply because a State was forced, by the necessities of the problem it faced, to join with another State in an ongoing enterprise. *Cf. Hans* v. *Louisiana*, 134 U.S. at 15. It is unreasonable to conclude that the Framers would have supposed that the immunity of one when added to the immunity of another left the States together without any immunity at all. Indeed, the fact that the States have agreed among themselves to grant an intersovereign agency immunity from suit in federal courts is no more novel, and no less entitled to respect, than any one State's decision to resolve a matter at the State

---

agency's conduct. While a State's liability for an interstate agency's actions is a *sufficient* condition to demonstrate that the agency is an arm of the State (*e.g.*, *Edelman* v. *Jordan*, 415 U.S. 651, 663 (1974); *Ford Motor Co.* v. *Department of Treasury*, 323 U.S. 459, 464 (1945)), that a suit by private parties against an interstate agency will not potentially subject the state treasury to liability is not a *necessary* condition for that interstate agency to rely upon the Eleventh Amendment. Only last Term, this Court rejected the proposition that the Eleventh Amendment is inapplicable when a State or its officials are sued for nonmonetary relief. "It would be a novel proposition indeed that the Eleventh Amendment does not bar a suit to enjoin the state itself simply because no money judgment is sought." *Cory* v. *White*, 102 S. Ct. 2325, 2329 (1982); *accord*, *Missouri* v. *Fiske*, 290 U.S. 18, 27 (1933) ("Expressly applying to suits in equity as well as at law, the Amendment necessarily embraces demands for the enforcement of equitable rights and the prosecution of equitable remedies when these are asserted and prosecuted by an individual against a State").

level through a state agency, rather than leave the problem to local government.

b. The question of whether the Eleventh Amendment is applicable to Article I courts, while never before addressed by this Court, can admit of only one answer. Like the proposition rejected in *Hans* v. *Louisiana* in regard to suits against a State by one of its own citizens, the supposition that the States in overruling *Chisholm* would have given themselves only the left-handed protection against suits in Article III courts, while leaving themselves fully open to suit in an Article I court, is "almost an absurdity on its face." 134 U.S. at 15. The principle that the States, through the Eleventh Amendment, not only left no doubt that *Chisholm* had been overruled, but also sought to reinstate the original understanding of the Constitution that the States had surrendered their sovereign immunity only to the extent necessary " 'in the plan of the convention' " (*Monaco*, 292 U.S. at 322-323 (citation omitted)), is applicable to Article I and Article III courts alike. The States surely did not refuse to submit " 'in the plan of the convention' " to tribunals constitutionally protected from State or congressional influence while, at the same time, willingly submitted themselves to suit before tribunals wholly subject to congressional control. That conclusion is contrary to the principles expressed in *Hans* and *Monaco*, inconsistent with this Court's conclusion that territories may invoke sovereign immunity when sued before non-Article III courts in the federal territories (*see Porto Rico* v. *Castillo*, 227 U.S. 270 (1913); *Kawananakoa* v. *Polyblank*, 205 U.S. 349 (1907)), and antithetical to the history and purposes of the Eleventh Amendment. That anamoly, created by the decision below, should not be permitted to stand.

As Petitioners have made clear (Pet. 19), *Nevada* v. *Hall*, 440 U.S. 410 (1979), does not undermine the

validity of this conclusion. The application of sovereign immunity in *Hall* would have required this Court, under the mantle of the Eleventh Amendment, to elect between different State doctrines of sovereign immunity, and to impress one State's doctrine upon another. *Hall* simply held that the Eleventh Amendment did not require this result. In this case, however, there are no conflicting state doctrines of sovereign immunity which must be reconciled. Instead, the question is one relating to State immunity from suit in what is clearly *not* a State court, and so does implicate the Eleventh Amendment. The failure of the court below to recognize this clear difference between *Hall* and this case cannot be justified.

c. The last question—whether the Eleventh Amendment is inapplicable simply because the plaintiff is a resident of the District of Columbia, rather than one of the States—does not require an extended analysis. This Court's decisions in *Hans* and *Monaco* compel the conclusion that a party is not entitled to abrogate a State's immunity simply by taking up residence on the north side of the Potomac River. Nothing in the reasons for the adoption of the Great Compromise suggest that it was designed to qualify the sovereign rights of the States themselves to decide whether to submit to suit in a federal court. Because the Framers of the Eleventh Amendment surely did not envision that a State's sovereign immunity would vanish simply because a party exercised his right freely to travel interstate (*see Shapiro* v. *Thompson*, 394 U.S. 618 (1969)), it is irrelevant whether a plaintiff resides in the District rather than a State.

2. We agree with the conclusion of the court below (Pet. App. 4a) and the United States Court of Appeals for the District of Columbia (*Morris* v. *WMATA*, No. 81-1209 (D.C. Cir. Mar. 8, 1983) slip op. at 6) that WMATA is an interstate agency of each of the signa-

tories to the Compact. Sections 2 and 4 expressly create WMATA as an interstate agency of each signatory (Pet. 16), and the Compact clearly distinguishes between WMATA and the political subdivisions of Maryland and Virginia. *Id.* at 16 & n.11. Furthermore, Maryland and Virginia both contribute state funds to WMATA for its operating budget, from which WMATA pays the tort judgments against it. Therefore, we agree with Petitioners that WMATA is an arm of the signatory States, and is entitled to invoke the same Eleventh Amendment immunity that Maryland and Virginia could.

3. The central flaw in the interpretation of Section 81 of the WMATA Interstate Compact adopted by the court below is the failure to respect the plain language of its text. That language quite explicitly omits the local courts of the District of Columbia from those in which the signatories permitted WMATA to be sued. Maryland and Virginia are signatories to the Compact and relied upon the plain language of its text in our decision to endorse it. As such, both States interpret the Compact to deny the local District of Columbia courts jurisdiction over WMATA.

The reliance by the court below upon the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473, was misplaced. Neither Maryland nor Virginia, of course, was at all involved in the drafting or consideration of that act, and no court in either State has ever concluded that it modified the terms of an interstate compact to which we both agreed. *See West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 31 (1951). In fact, Section 86(5)(a) of the Compact explicitly states that "[a]ll laws * * * of the United States and the District of Columbia inconsistent with the [Compact] are hereby amended for the purpose of this Act to the extent necessary to eliminate such inconsistencies and to carry out

the provisions of this [Compact] * * *." That section, therefore, amended any then existing federal law inconsistent with the jurisdictional limitations set out in Section 81 of the Compact, and neither Maryland nor Virginia has ever consented to a revision of that section. The failure of the court below to respect the plain language of Section 81 requires this Court to reverse.[5]

In construing Section 81 of the Compact, the court below also failed to give effect to the principle that a statute will not be deemed to have abrogated a State's Eleventh Amendment immunity unless it "explicitly and by clear language indicate[s] on its face an intent to sweep away the immunity of the States" or has "a history which focuses directly on the question of state liability and which shows that Congress considered and firmly decided to abrogate the Eleventh Amendment immunity of the States." *Quern* v. *Jordan*, 440 U.S. 332, 345 (1979); *see Hutto* v. *Finney*, 437 U.S. 678, 698 n.31 (1978); *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 448 n.1, 449 n.2, 452 (1976); *Employees* v. *Missouri Public Health Dept.*, 411 U.S. 279, 285-286 (1973). This Court found such a clear statement of congressional intent in *Petty* v. *Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275 (1959), because the interstate compact in that case explicitly authorized suit against the interstate agency in "*any* * * * court of the United States * * *." 359 U.S. at 281 (emphasis added). *See also* Pet. 25 n.19 (listing compacts in which Congress broadly authorized suit in *any* court). The decision below, therefore, also conflicts with this Court's decisions in *Petty* and *Quern* and should, for that reason as well, be reversed.

---

[5] "Our role is limited to giving effect to the intent of the Treaty parties. When the parties to a treaty both agree as to the meaning of a treaty provision, and that interpretation follows from the clear treaty language, we must, absent extraordinarily strong contrary evidence, defer to that interpretation." *Sumitomo Shoji America, Inc.* v. *Avagliano*, 102 S. Ct. 2374, 2380 (1982).

B. This Case Presents the Full Range of Eleventh Amendment and Interstate Compact Issues in a Posture in Which They Will Definitely Recur.

Review is appropriate because this case presents all of the Eleventh Amendment and Interstate Compact issues that can be expected to arise out of WMATA's status. It is clear that two of the Eleventh Amendment issues presented in the petition will recur in the Article III courts of the District of Columbia. The United States Court of Appeals for the District of Columbia Circuit has recently noted that the Eleventh Amendment may bar suit against WMATA in the Article III courts of the District because WMATA is an interstate agency. *Morris* v. *WMATA*, *supra*, No. 81-1209, slip op. at 6-7. Nonetheless,[6] the question of whether the Eleventh Amendment is applicable to Article I courts cannot arise in the Article III courts in the District. Moreover, the proper construction of Section 81 of the Compact can arise only in one of the local District of Columbia courts. Therefore, only a case like this one presents the full range of Eleventh Amendment issues that are likely to arise out of WMATA's status.[7]

---

[6] That the District of Columbia Circuit did not in *Morris* definitively answer that question is of no importance in this regard. Should the District of Columbia Circuit disagree with the District of Columbia Court of Appeals, that conflict would warrant review by this Court. S. Ct. Rule 17.1(a); *see, e.g., Jones* v. *Helms*, 452 U.S. 412, 417 (1981) (noting conflict). But even if the District of Columbia Circuit agrees with the District of Columbia Court of Appeals that WMATA, as an interstate agency, is entitled to invoke the Eleventh Amendment, the erroneous interpretation by the court below of *Nevada* v. *Hall*, *supra*, would be left standing.

[7] Because of WMATA's position as an interstate agency responsible for operating an interstate, mass transit system, tort suits against WMATA, like those against any government agency, are likely to recur with regularity. Since its decision below, the District of Columbia Court of Appeals has repeatedly and summarily reversed other judgments from the local Superior Court in memorandum orders that simply cite this case as authority. *E.g., Lewis*

CONCLUSION

For the foregoing reasons and the reasons given in the petition, *amici* State of Maryland and Commonwealth of Virginia urge this Court to grant the WMATA petition and to reverse the judgment of the District of Columbia Court of Appeals.

Respectfully submitted,

STEPHEN H. SACHS *
Attorney General of Maryland
7 North Calvert Street
Baltimore, Maryland 21202
(301) 576-6300

GERALD BALILES
Attorney General of Virginia
Supreme Court Building
101 North 8th Street
Richmond, Virginia 23219
(804) 786-2071

* Counsel of Record

---

v. *WMATA*, No. CA 10636-80 (D.C. Mar. 15, 1983) (mem.). Therefore, the court below has concluded that its decision in this case has foreclosed any further challenge to the jurisdiction of the local District of Columbia courts based upon either of the grounds contained in the petition. Accordingly, unless this Court reverses the instant cases, WMATA will be forced to defend every tort suit filed against it in the District Superior Court.